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Attorney for Defendants Inmar Associates, Inc.
and Marvin H. Mahan

STATE OF NEW JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

SCIENTIFIC CHEMICAL PROCESSING, INC.,
et al.

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
ESSEX COUNTY

Docket No. L-1852-83E
Civil Action

AFFIDAVIT IN OPPOSITION
TO RELIEF SOUGHT

STATE OF NEW JERSEY

ss.:

COUNTY OF UNION

I, Marvin H. Mahan, of full age, upon my oath, depose and say:

1. I am an officer of Inmar Associates, Inc. ("Inmar").

2. Inmar leased in the early 1970's to Scientific Chemical Processing, Inc. ("Processing") property Inmar owns in Carlstadt, New Jersey on Paterson Plank Road.

3. Since the commencement of the lease, Processing conducted a material recovery operation in which neither Inmar nor I took any part.

4. All apparatus and tanks on the premises belong to Processing or others but, in any event, do not belong to Inmar or to me. The only improvement owned by Inmar is the office building on the site.

5. Inmar and I were not parties to the litigation referred to in attachments to the Complaint. Neither Inmar nor I were notified by the New Jersey Department of Environmental Protection of any situation on the site the agency considered being a problem. As indicated by the attachments to the Complaint, the agency dealt solely with Processing as the party responsible for activities at the site. As also indicated by the attachments, Processing held at least a Temporary Operating Authority to operate its business at the site.

6. Inmar joins in the agency's request that Processing remove its apparatus and material from the site and that the generators of the material, who remain liable for the material if it is hazardous, remove their material as required under federal and state statutes.


Marvin H. Mahan

Sworn and subscribed to this
24th day of May, 1983

MARIE BORING
NOTARY PUBLIC OF NEW JERSEY

345817



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ANSWER

Inmar Associates, Inc. ("Inmar") and Marvin H. Mahan ("Mahan"), having offices at 1703 E. Second Street, Scotch Plains, New Jersey, say by way of Answer to the Complaint:

1. Inmar and Mahan are without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 and so leave plaintiff to its proofs.

2. Inmar and Mahan admit that Inmar is a New Jersey corporation which owns property in Carlstadt, New Jersey; that Mahan and George Terpak are directors of Inmar. Inmar and Mahan deny all other allegations contained in paragraph 7.

3. Inmar and Mahan are without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 and so leave plaintiff to its proofs.

4. Inmar and Mahan admit the Carlstadt property is on Paterson Plank Road but deny the balance of the allegations contained in paragraph 38 and all the allegations contained in paragraphs 39, 40, 41, 42, 43, 44, 45, and 46.

5. Inmar and Mahan are without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 47, 48, 49, and 50 and so leave plaintiff to its proofs.

6. Inmar and Mahan admit Inmar is the fee owner of the Carlstadt site and that Inmar leased the site to Scientific Chemical Processing, Inc. as alleged in paragraphs 51 and 52 but deny the rest of the allegations contained therein as well as all the allegations contained in paragraph 53.

7. Inmar and Mahan are without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 54, 55, 56, 57, 58, 59 and 60, and so leave plaintiff to its proofs.

8. Inmar and Mahan repeat their answers to paragraphs 1 through 60 as realleged in paragraph 61 as if fully set forth herein.

9. Inmar and Mahan deny the allegations contained in paragraphs 62, 63, 64, 65, 66, 67, 68, and 70.

10. Inmar and Mahan are without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 69 and so leave plaintiff to its proof.

11. Inmar and Mahan repeat their answers to paragraphs 1 through 70 as realleged in paragraph 71 as if fully set forth herein.

12. Inmar and Mahan deny the allegations contained in paragraphs 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85.

13. Inmar and Mahan repeat their answers to paragraphs 1 through 85 as realleged in paragraph 86 as if fully set forth herein.

14. Inmar and Mahan deny the allegations contained in paragraphs 87, 88, 89, 90, 91, 92, 93 and 94.

15. Inmar and Mahan repeat their answers to paragraphs 1 through 94 as realleged in paragraph 95 as if fully set forth herein.

16. Inmar and Mahan deny the allegations contained in paragraphs 96, 97, 98, 99, and 100.

17. Inmar and Mahan deny the allegations contained in paragraphs 1 through 100 as realleged in paragraph 101 as if fully set forth herein.

18. Inmar and Mahan deny the allegations contained in paragraphs 102, 103 and 104.

19. Inmar and Mahan repeat their answers to paragraphs 1 through 105 as realleged in paragraph 105 as if fully set forth herein.

20. Inmar and Mahan deny the allegations contained in paragraphs 106, 107, 108, 109, 110, 111, 112, and 113.

21. Inmar and Mahan repeat their answers to paragraphs 1 through 113 as realleged in paragraph 114 as if fully set forth herein.

22. Inmar and Mahan deny the allegations contained in paragraphs 115, 116, 117, 118, 119, and 120.

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim against Inmar and Mahan upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The verification of the Complaint is insufficient for the Court to grant the relief sought.

THIRD AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring the within action in regard to relief based upon strict liability, common law nuisance, and common law negligence.

FOURTH AFFIRMATIVE DEFENSE

DEP approved a plan for the operation and closing of the Carlstadt site and is estopped from seeking the relief outlined in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

DEP refused to permit removal of material from the Carlstadt site it now claims is hazardous by Scientific Chemical Processing, Inc. and in so doing is precluded from seeking relief against Inmar and Mahan.

SIXTH AFFIRMATIVE DEFENSE

DEP failed to include Inmar and Mahan in discussions regarding conditions it alleges are violations of applicable statutes and common law and in so failing to involve Inmar and Mahan or to provide notice of its claims is precluded from seeking relief against Inmar and Mahan.

SEVENTH AFFIRMATIVE DEFENSE

The danger alleged is not imminent having as stated in the Complaint existed at the Carlstadt site since at least 1979 and hence the extraordinary relief sought is not warranted.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join necessary parties, the generators of the allegedly hazardous materials.

NINTH AFFIRMATIVE DEFENSE

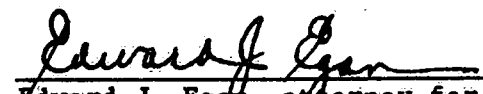
By failing to join as parties the generators of the materials, plaintiff has unconstitutionally selected Inmar and Mahan for prosecution of the claims alleged.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has adequate remedy for the relief sought in the funds provided by federal and state environmental cleanup funds.

WHEREFORE, Inmar and Mahan ask the Complaint be dismissed with costs and such other relief the Court deems appropriate.

Dated: May 24, 1983


Edward J. Egan, attorney for
Inmar Associates, Inc.
and Marvin H. Mahan

EDWARD J. EGAN
COUNSELLOR AT LAW
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SCOTCH PLAINS, N. J. 07076
(201) 322-5924

May 24, 1983

Hon. Reginald Stanton
Superior Court of New Jersey
228 Hall of Records
Newark, New Jersey 07102

Re: State of New Jersey, Department of
Environmental Protection v. Scientific
Chemical Processing, Inc., et al
Docket No. L-1852-83E

Dear Judge Stanton:

I am writing this letter on behalf of my clients, Inmar Associates, Inc. ("Inmar") and Marvin H. Mahan, ("Mahan"), in opposition to the application made by the New Jersey Department of Environmental Protection ("DEP") for emergent relief which matter has been given a return date of May 27, 1983. Inmar owns the property in Carlstadt which is leased to Scientific Chemical Processing, Inc. ("Processing"). Processing has operated some sort of recovery operation on the property for some time. Inmar has not engaged in those business operations but has merely been the owner of the real estate. Other than an office building on the site, the tanks, trailers and whatever other apparatus are on the property belong to Processing and not to Inmar or Mahan.

Inmar would indeed like to have the responsible parties clean up the site. The situation is unsightly and may indeed at some point pose an environmental problem. The issue at hand of the imminency of an environmental problem has not, however, been demonstrated by the DEP. DEP concedes that the tanks and other apparatus have existed on the site for several years (see paragraphs 69 and 70). The DEP has engaged in apparently extensive discussion, to judge from the attachments to the Complaint, with parties other than Inmar and Mahan, to have the material removed. Nothing, however, would indicate any imminent hazard that would warrant the extraordinary relief the DEP seeks against Inmar and Mahan. From a legal point of view, the affidavits attached to the Complaint are not sufficient to support the relief sought. A full hearing on the matter, I would urge, is the appropriate method of handling this case. The affidavits are merely conclusionary and vague. The Court should have the benefit of how those conclusions were reached to aid it in determining their worth rather than a mass of somewhat jumbled "supporting" data. It is somewhat disconcerting that no analysis of the material on the site is presented. To say that a particular chemical is present in the tanks and apparatus begs the key environmental question of the quantity and the concentration since even a cursory reading of the DEP regulations and, more

importantly, the regulations promulgated by the United States Environmental Protection Agency ("EPA") reveals that concentration is quite important as well as the medium into which a material is discharged to determine hazard. What sits in a tank may indeed not be hazardous at all; what is placed in a public drinking system may be quite hazardous. The fact that material may become hazardous if a stream of a specific concentration is introduced into a water system does not make a situation imminently dangerous. Nor does the fact that Processing no longer has a TOA from the DEP turn a situation into a dangerous situation calling for extraordinary relief. From the position of the Court, it would seem difficult to credit a statement that a potential for fire explosion exists as is contended in the affidavit of Alphonse Iannuzzi, Jr. (Exhibit "J"). The affidavit fails to state what the material is; indeed it seems to be contain oil which does not explode. Common sense would indicate gasoline in a car's tank might explode, but that does not make the possibility imminent. The affidavit itself indicates the conditions have existed at least since March of 1982. Affidavits to support extraordinary intervention by a Court should be factual and addressed to a specific issue not mere conclusionary statements that are not helpful and are difficult to contravert.

Neither Inmar nor Mahan have had any part in the DEP's efforts to address DEP's concerns at the Carlstadt site. This is not because Inmar and Mahan have disregarded the DEP's requests because DEP has never made any requests of them. Neither Inmar nor Mahan were parties to the litigation referred to in the attachments to the Complaint. This present law suit is the first time Inmar and Mahan have received any communication about the Carlstadt site from DEP. My clients are as anxious as the DEP to have environmental concerns at the Carlstadt site addressed.

A substantial issue exists, however, as to whether Inmar and Mahan are responsible under the statutes cited for conditions not created by the owner of the site, conditions not caused by the landlord in any fashion. No brief has been submitted to support the DEP's legal contentions, and a reading of the statutes enumerated in the Complaint does not reveal that a landlord, and a fortiori, an individual designated by the Complaint as having "primary authority for the operations" of a corporate defendant, is liable for the relief sought.

There being a serious legal question of the validity of the basis for liability advanced by the DEP against Inmar and Mahan, I would urge that the danger of granting the extraordinary relief prayed for would far outweigh any benefits to the public good. Should the Court ultimately decide there is no basis for the relief sought against Inmar and Mahan, it would be unable to rectify matters. The harm to Inmar and Mahan could not be undone. It would seem that the matter could and should await a full hearing on the issues especially in light of the admissions by the DEP that the conditions have existed for several years and the vague presentation of what specifically concerns the agency.

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The vagueness of the prayers for relief is troubling since they seek unspecified actions be taken. A Court, when framing relief, should be satisfied that it is not issuing an order that does not inform a defendant of what it must do. The DEP has presented no plan or outline for accomplishing the relief it requests. It is obvious, however, that control of disposal of material rests squarely with the DEP. A defendant can be ordered to stop an activity or to refrain from an activity, but he ought not be ordered to perform an unspecified act when the plaintiff has control over a defendant's ability to comply. To do otherwise leaves a defendant unsure of what he must do and at the other party's mercy. A defendant directed by the Court should not be left at its peril in determining what it will take to comply with a Court's order; the order should be precise and clear so that the order is the determining document, not some interpretation by the other party or some compliance terms devised by the other party.

I respectfully urge that the request for interim relief be denied and the matter set down for trial in the normal course.

I enclose the original and copy of the Answer of Inmar and Mahan and two copies of the Affidavit of Mahan. I am sending a copy of each to Mr. Reger and to Mr. Barbire, who I understand is representing other defendants.

Yours truly,

Edward J. Egan

EJE/rq

cc: David W. Reger, DAG
w/encls.
Paul S. Barbier, Esq.
w/encls.